

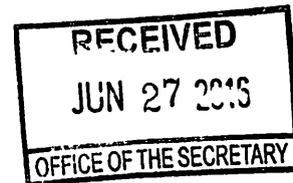
UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING  
File No. 3-16949

In the Matter of

Sandip Shah,

Respondent.



DIVISION OF ENFORCEMENT'S MOTION AND MEMORANDUM IN SUPPORT  
OF IMPOSITION OF SANCTIONS

Dated: June 24, 2016

Respectfully submitted,

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## TABLE OF CONTENTS

<b>Introduction</b> .....	1
<b>Discussion</b> .....	3
<b>A. Mr. Shah Violated Section 10(b) of the Exchange Act     and Rule 10b-5(a), Thereunder</b> .....	3
1. Elements of the Alleged Offenses.....	3
2. The Allegations of the OIP Establish Mr. Shah’s Violation of Section 10(b) of the Exchange Act and Rule 10b-5(a) Thereunder.....	4
3. Mr. Shah’s Criminal Convictions on Nine Counts of Wire Fraud Establish His Violation of Section 10(b) of the Exchange Act and Rule 10b-5(a) thereunder.....	7
<b>B. Sanctions</b> .....	9
1. A Cease-and-Desist Order Should Be Issued as to Mr. Shah.....	10
2. A Permanent Penny Stock Bar Should be Imposed as to Mr. Shah.....	11
<b>Conclusion</b> .....	15

## TABLE OF AUTHORITIES

### Cases

<i>Aaron v. SEC</i> , 446 U.S. 680(1980). .....	3
<i>Dolphin &amp; Bradbury, Inc. v. SEC</i> , 512 F.3d 634 (D.C. Cir. 2007).....	4
<i>Ernst &amp; Ernst v. Hochfelder</i> , 425 U.S. 185 (1976).....	4
<i>In the Matter of Maria T. Giesige</i> , SEC Release No. ID-359, 2008 WL 4489677.....	11
<i>In the Matter of Peter Siris</i> , Admin. Proceeding File No. 3-15057.....	13-14
<i>In the Matter of Robert Pribilski</i> , Admin. Proceeding File 3-14875.....	14
<i>In the Matter of Stanley Brooks, et al.</i> , Admin. Proceeding File No. 3-14983.....	14
<i>In the Matter of Vladimir Bugarski et al.</i> , Admin. Proceeding File No. 3-14496.....	13
<i>KPMG Peat Marwick, LLP v. SEC</i> , Exchange Act Release No. 43862, 2001 SEC LEXIS 98, (Jan. 19, 2001), <i>pet. denied</i> , 289 F.3d 109 (D.C. Cir. 2002).....	10, 11
<i>SEC v. Blackout Media Corp.</i> , 2012 WL 4051951 (S.D.N.Y. Sept. 14, 2012).....	13
<i>SEC v. Blatt</i> , 583 F. 2d 1325 (5th Cir. 1978).....	13
<i>SEC v. Boock</i> , 2012 WL 3133638 (S.D.N.Y. Aug. 2, 2012).....	13
<i>SEC v. Collins &amp; Aikman Corp.</i> , 524 F.Supp.2d 477 (S.D.N.Y. 2007).....	3
<i>SEC v. First Pacific Bancorp</i> , 142 F.3d 1186 (9th Cir. 1998).....	13
<i>SEC v. Hasho</i> , 784 F.Supp. 1059 (S.D.N.Y. 1992).....	3
<i>SEC v. Indigenous Global Development Corp.</i> , 2008 WL 8853722 (N.D. Cal. June 30, 2008)...	13
<i>SEC v. Infinity Group Company</i> , 212 F.3d 180 (3d Cir. 2000).....	4
<i>SEC v. Kearns</i> , 691 F.Supp.2d 601 (D.N.J. 2010).....	3
<i>SEC v. Lucent Technologies, Inc.</i> , 610 F.Supp.2d 342 (D.N.J. 2009).....	3
<i>Steadman v. SEC</i> , 603 F.2d 1126 (5th Cir. 1979).....	13
<i>VanCook v. SEC</i> , 653 F.3d 130 (2d Cir. 2011).....	3
<i>WHX Corp. v. SEC</i> , 362 F.3d 854 (D.C. Cir. 2004).....	10

**Statutes and Rules**

Section 3(a)(51) of the Exchange Act, 15 U.S.C. § 78c(a)(51).....12

Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b).....passim

Section 15(b)(6) of the Exchange Act, 15 U.S.C. § 78o(b)(6).....passim

Section 21C of the Exchange Act, 15 U.S.C. § 78u-3.....2, 10

Exchange Act Rule 3a51-1, 17 C.F.R. 240.3a51-1.....12

Exchange Act Rule 10b-5(a), 17 C.F.R. 240.10b-5.....passim

Exchange Act Rule 600(b)(47), 17 CFR 242.600(b)(47).....12

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**ADMINISTRATIVE PROCEEDING**  
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**In the Matter of**

**Sandip Shah,**

**Respondent.**

**DIVISION OF ENFORCEMENT'S MOTION AND MEMORANDUM IN SUPPORT  
OF IMPOSITION OF SANCTIONS**

**Introduction**

On November 9, 2015, the Commission issued an Order Instituting Proceedings ("OIP") as to Sandip Shah. The Division of Enforcement ("Division") submits this brief in support of its motion for finding of violations and imposition of sanctions as to allegations in the OIP that Mr. Shah violated Section 10(b) of the Securities Exchange Act ("Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5(a), thereunder, 17 C.F.R. 240.10b-5.

The Division and Mr. Shah have agreed on an approach for resolving this matter. The parties have agreed that the primary issue in the case is that of sanctions, specifically the imposition of a penny stock bar. Mr. Shah will stipulate that he is liable for the violations alleged in the Order Instituting Proceedings (OIP), with the issue of sanctions being presented, and briefed, to the Court.

Therefore, as relief, the Division does not argue for imposition of disgorgement of a monetary sanction. Rather, in addition to an Order pursuant to Section 21C of the Exchange Act, 15 U.S.C. § 78u-3, that Mr. Shah cease-and-desist from committing or causing violations of and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5, the Division seeks an Order pursuant to Section 15(b)(6) of the Exchange Act, 15 U.S.C. § 78o(b)(6), barring Mr. Shah from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock. The Division understands that Mr. Shah will argue for a reduced term penny stock bar or no bar at all.

In addition to the OIP, attached here as Exhibit 1, the Division also submits the following: a) an Indictment returned in the District of Massachusetts (United States of America v. Sandip Shah, 14-cr-10135-NMG) in which Mr. Shah is charged with nine counts of wire fraud, 18 U.S.C. § 1343, and a forfeiture allegation, 18 U.S.C. § 981(a)(1)(C) & 28 U.S.C. § 2461(c), attached as Exhibit 2; b) the verdict form in United States of America v. Sandip Shah, attached as Exhibit 3; c) Judgment in a Criminal Case entered against Mr. Shah in United States of America v. Sandip Shah, attached as Exhibit 4; and d) an Amended Order of Forfeiture (Money Judgment) entered against Mr. Shah in United States of America v. Sandip Shah, attached as Exhibit 5.

## Discussion

### A. Mr. Shah Violated Section 10(b) of the Exchange Act and Rule 10b-5(a), Thereunder

#### 1. Elements of the Alleged Offenses

The OIP alleges that Mr. Shah violated the federal securities laws for his actions pursuant to the theory of “scheme liability” created by Section 10(b) of the Exchange Act and Rule 10b-5(a) thereunder. Exchange Act Rule 10b-5(a) states that it is unlawful for any person “[t]o employ any device, scheme, or artifice to defraud” in connection with the purchase or sale of a security. To establish scheme liability, courts generally require that the defendant commit a deceptive or fraudulent act or orchestrate a fraudulent scheme. *See, e.g., SEC v. Collins & Aikman Corp.*, 524 F.Supp.2d 477, 485-86 (S.D.N.Y. 2007); *see also, SEC v. Kearns*, 691 F.Supp.2d 601, 618 (D.N.J. 2010) (recognizing a claim for scheme liability where SEC alleged “(1) that the defendant committed a deceptive or manipulative act, (2) in furtherance of the alleged scheme to defraud, (3) with scienter,”) (*quoting SEC v. Lucent Technologies, Inc.*, 610 F.Supp.2d 342 at 350 (D.N.J. 2009)); *see also VanCook v. SEC*, 653 F.3d 130, 138 (2d Cir. 2011) (elements of a violation of Section 10(b) are (1) employing a device, scheme or artifice to defraud, (2) with scienter, (3) in connection with the purchase or sale of securities, (4) by jurisdictional means).

To demonstrate violations of the antifraud provisions of the federal securities laws, including Rule 10b-5(a) of the Exchange Act, the Commission must show that a party acted with scienter. *Aaron v. SEC*, 446 U.S. 680, 691 (1980). *See also SEC v. Hasho*, 784 F.Supp. 1059, 1106 (S.D.N.Y. 1992). Scienter is a mental state embracing intent to deceive, manipulate or

defraud. *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 (1976). Circuit courts have concluded that scienter may also be established by a showing that a defendant acted with recklessness or sometimes “extreme recklessness,” both of which are characterized by an “extreme departure from the standards of ordinary care.” *See, e.g., SEC v. Infinity Group Company*, 212 F.3d 180, 192 (3d Cir. 2000) (requiring showing of conscious misbehavior or recklessness); *Dolphin & Bradbury, Inc. v. SEC*, 512 F.3d 634, 639 (D.C. Cir. 2007) (showing of extreme recklessness can satisfy scienter requirement).

In addition to the violation of Section 10(b) and Rule 10b-5(a) thereunder, the OIP alleges that on May 15, 2015, a federal jury found Mr. Shah guilty of nine counts of wire fraud and, among other things, the District Court subsequently sentenced him to 27 months imprisonment. On October 15, 2015, the District Court entered an Amended Order of Forfeiture as to Mr. Shah in which it made various findings and ordered a forfeiture and money judgment against him in the amount of \$5,750.

**2. The Allegations of the OIP Establish Mr. Shah’s Violation of Section 10(b) of the Exchange Act and Rule 10b-5(a) thereunder**

As discussed above, the Division and Mr. Shah have agreed on an approach for resolving this matter in Mr. Shah stipulates that he is liable for the violations alleged in the Order Instituting Proceedings (OIP) and the issue of sanctions is presented, and briefed, to the Court. A summary of the allegations from the OIP follows.

During the relevant time frame Mr. Shah was in the business of promoting penny stocks and assisting public companies in finding sources of funding. In that capacity he participated in offerings of the common stock of SOHM, Inc. (“SOHM”), Costas, Inc. (“Costas”), and a third

company (“Company A”), each of which is a penny stock. *OIP ¶ A(1) [Exhibit 1]*. In approximately March 2011, a witness cooperating in the undercover investigation (the “CW”) introduced Shah and a third party (“RT”) to a purported corrupt manager of a hedge fund (the “Fund”), who actually was an undercover agent with the FBI (the “UA”). *OIP ¶ C(1)(a)*. RT was the President and CEO of a company that purportedly designed military defense technology (“Company A”). Shah worked for Company A as a financial consultant. A meeting was arranged between the UA, RT and Shah. During the meeting, the UA explained to Shah and RT that he was willing to use the Fund’s money to buy stocks at above-market prices in publicly traded companies in exchange for a secret 50% kickback to him. The UA explained that the kickbacks would be paid to a “nominee” company, which the UA controlled, and about which the Fund had no knowledge. In order to conceal the kickback payments the nominee company would issue a series of invoices to Company A for bogus consulting services. The UA told Shah and RT that he would need their assistance creating the fake invoices for the never-to-be-performed consulting services. Shah and RT agreed to participate in the scheme. *OIP ¶ C(1)(a-c)*.

After the meeting, RT, with Shah’s knowledge and assistance, prepared the documents related to the scheme, including a bogus consulting agreement, and sent them to the UA via e-mail. The UA invested a total of \$80,000 of his Fund's money in Company A in three wire transfer installments of \$15,000, \$25,000, and \$40,000. The UA received a total of \$40,000 in kickbacks from Company A and RT in three wire transfer kickback payments of \$7,500, \$12,500, and \$20,000. As part of the scheme, the UA and Shah had discussed and agreed that the UA would pay Shah a portion of the kickbacks paid by Company A to the UA. In addition,

the UA and Shah agreed that Shah would receive a percentage of kickbacks paid by any other companies that Shah brought to the UA as part of the kickback scheme. *OIP ¶ C(1)(d-k)*.

In the next few months, Shah found and introduced the UA to two additional companies in which the UA could invest the Fund's money in exchange for kickbacks to the UA and payments from those kickbacks to Shah. The companies involved were SOHM, Inc. and Costas, Inc. *OIP ¶ C(2)(3)*. With respect to both companies, Shah participated in discussions with the UA and a principal from the company during which the UA outlined the kickback scheme, including the falsification of consulting services contracts that were necessary in order to carry out the scheme. *OIP ¶ C(2)(b-d) and ¶ C(3)(a-b)*. As with Company A, Shah and the UA had agreed that Shah would receive a portion of the kickbacks paid to the UA. The UA invested \$50,000 of the Fund's money in SOHM, Inc. and \$25,000 in Costas, Inc. *OIP ¶ C(2)(d) and ¶ C(3)(b)*. Shah and the principals of those companies then kicked back 50% of the invested money to the UA. *OIP ¶ C(2)(h) and ¶ C(3)(d)*.

Shah, consistent with his agreement with the UA, received portions of the kickback monies. The UA sent Shah a total of \$5,750, which was a portion of the kickbacks paid by the executives of Company A, SOHM, and Costas. The payments represented Respondent's compensation for having introduced the company executives to the UA and for his facilitation of the on-going schemes. *OIP ¶ C(4)*. Shah's solicitation of companies into the kickback scheme only ended when the undercover operation itself came to an end.

**3. Mr. Shah's Criminal Convictions on Nine Counts of Wire Fraud Establish His Violation of Section 10(b) of the Exchange Act and Rule 10b-5(a) thereunder**

On May 8, 2014, a federal grand jury returned an Indictment that charged Mr. Shah with nine counts of wire fraud, 18 U.S.C. § 1343, as well as attempted wire fraud, 18 U.S.C. § 1349, and aiding and abetting wire fraud, 18 U.S.C. § 2. The criminal charges against Mr. Shah closely track the allegations levied against him in the OIP. Both the criminal and civil charges arise out of a fraudulent scheme in which insiders of publicly-traded penny stock companies paid secret kickbacks to a purported corrupt hedge fund manager, who was in fact an undercover agent with the FBI. In exchange for the kickbacks the Fund Manager purchased restricted stock of the penny stock companies on behalf of his purported hedge fund, which did not actually exist.

The summary paragraph of the Indictment, captioned "The Fraud," reads as follows:

Beginning in or about March 2011, and continuing through at least January 2012, SANDIP SHAH engaged in, and attempted to engage in, a scheme to defraud and obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, by agreeing to introduce to UA [the FBI's undercover agent] executives of publicly traded companies, who would agree to pay a secret kickback to UA in exchange for receiving funding for their companies from the Fund, and to facilitate such arrangements. SANDIP SHAH and UA agreed that for each kickback made pursuant to such arrangements, SANDIP SHAH would receive a portion of the kickback. *Indictment, par. 6 [Exhibit 2].*

The publicly traded companies identified in the Indictment, and the means and methods used by Mr. Shah in commission of the alleged criminal violations, are the same as those identified in the OIP in this matter. *Indictment, pars. 7-34.*

On May 15, 2015, a federal jury convicted Mr. Shah of all nine counts of wire fraud, attempted wire fraud and aiding and abetting wire fraud, *Verdict Form [Exhibit 3]*, and on September 23, 2015, U.S. District Court Judge Gorton sentenced Mr. Shah to a term of imprisonment of 27 months on each of the nine counts, to be served concurrently. *Judgment in a Criminal Case [Exhibit 4]*. Judge Gorton also imposed a money judgment and forfeiture as to Mr. Shah, which he later amended in an Amended Order of Forfeiture (Money Judgment). *Exhibit 5*. The Amended Order, which was entered in response to a motion to modify the judgment made by the prosecution, reflected a total monetary sanction as to Mr. Shah of \$5,750 which, the Court found, represented the proceeds of Mr. Shah's crimes. *Judgment in a Criminal Case, p. 2.*

As part of its Amended Order the Court entered a series of findings with respect to what the government had proved at Mr. Shah's trial. Among the Court's findings were the following:

- The government proved at trial that, in or about March 2011, an individual, who was an undercover FBI agent ("UA") and who claimed to be a representative of the investment fund "Seafin Capital, LLC," met Sandip Shah and R.T. R.T. was the President and Chief Executive Officer of Advanced Defense Technologies, Inc. ("ADTI"), for which Sandip Shah worked as a consultant;
- At the meeting, which was consensually recorded, the UA explained to Sandip Shah and R.T. that he was willing to use his fund's money to buy stocks in

publicly traded companies at above-market prices in exchange for a secret 50% kickback to himself;

- The UA explained that the kickbacks would be paid to a "nominee" company, which the UA controlled, and about which the fund had no knowledge
- The UA explained that, to conceal the kickback payments, the nominee company would issue a series of invoices to ADTI for consulting services that would never be rendered;
- R.T. and the Defendant, in turn, prepared and submitted such fake invoices;
- The United States also proved at trial that approximately one month later, on April 14, 2011, Sandip Shah flew back to Boston to introduce another executive, Shailesh Shah, to the UA, and at the time, Shailesh Shah was the President and Chief Executive Officer of a publicly traded company, SOHM, Inc.;
- Less than a month later, on approximately May 3, 2011, Sandip Shah, along with CW-I [a cooperating witness], introduced a second company, Costas, Inc., which was also run by Shailesh Shah, to the UA on a conference call for the purpose of engaging in the kickback transaction;
- As a result of these agreements, the FBI sent a total of \$80,000 in three payments to ADTI, approximately \$50,000 in two payments to SOHM, and \$25,000 in one payment to Costas; and,
- Sandip Shah, R.T., and Shailesh Shah then kicked back 50% of those funds to the UA.

These findings similarly establish Mr. Shah's violation of Section 10(b) and Rule 10b-5(a) thereunder.

**B. Sanctions**

**1. A Cease-and-Desist Order Should Issue as to Mr. Shah**

Under Section 21C(a) of the Exchange Act, the Commission is authorized to issue an order requiring a person who has violated a relevant statute, regulation or rule under its jurisdiction to cease and desist from committing or causing such a violation or any future violation of such statute, regulation or rule. 15 U.S.C. § 78u-3(a). Entry of a cease-and-desist order is not "automatic" upon proof of a past violation. *See KPMG Peat Marwick, LLP v. SEC*, Exchange Act Release No. 43862, 2001 SEC LEXIS 98, at\*101, \*114 (Jan. 19, 2001), *pet. denied*, 289 F.3d 109, 124-25 (D.C. Cir. 2002). There must be evidence of "some risk" of future violation before a cease-and-desist order is appropriate. *Id.* The risk need not be very great, however, to warrant issuing a cease-and-desist order and is less onerous than the "likelihood of future violations" standard for obtaining injunctive relief. *Id.* However, courts have held that the "some risk" standard still requires more proof than just that the respondent committed a prior violation. *See WHX Corp. v. SEC*, 362 F.3d 854, 859 (D.C. Cir. 2004).

In addition to risk of future violations, the Commission also considers the following factors to determine whether a cease-and-desist order is appropriate, with no one factor being dispositive: a) the seriousness of the violation; b) the isolated or recurrent nature of the violation; c) the violator's state of mind; d) the sincerity of any assurances against future violations; e) the recognition by the violator of the wrongful nature of his conduct; and f) the opportunity to

commit future violations. *In the Matter of Maria T. Giesige*, SEC Release No. ID-359, 2008 WL 4489677 (Oct. 7, 2008) (citing *KPMG Peat Marwick, LLP*, 54 SEC 1135, 1192 (2001)).

Here, each of the above factors weighs in favor of issuance of a cease-and-desist order as to Mr. Shah. The violations of the securities laws were egregious; egregious enough to warrant both criminal and civil prosecution, with the imposition of a twenty-seven month prison sentence in the criminal case. The violations were not isolated. Mr. Shah's involvement touched three different companies. Had the FBI not pulled the plug on the undercover operation there is no reason to believe Mr. Shah would have discontinued his involvement in the scheme. In addition, his state of mind reflects a high degree of scienter. He acted with full disclosure and understanding of the illegal nature of the conduct, and with the clear intention to illegally enrich himself. As to assurances against future violations, Mr. Shah thus far has offered none.

Finally, the violations alleged against Mr. Shah, and for which he was convicted in the criminal case, involve companies that trade in the relatively unregulated over-the-counter stock market. Those markets are easily accessible, offering ample opportunity for Mr. Shah to commit future violations of the federal securities laws relating to trading in penny stocks which, correspondingly, is why the Division seeks a permanent penny stock bar as a sanction. The cumulative weight of these factors easily meets the standard for "some risk" of future violations. Therefore, the issuance of a cease-and-desist order is both appropriate and necessary to ensure the highest possible barriers to a recurrence of these sorts of violations by Mr. Shah.

## **2. A Permanent Penny Stock Bar Should Be Imposed as to Mr. Shah**

Pursuant to Section 15(b)(6) of the Exchange Act, penny stock bars may be imposed in Commission actions "against any person participating in, or, at the time of the alleged

misconduct, who was participating in, an offering of penny stock.” 15 U.S.C. § 78o(b)(6). This definition includes “any person engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of, any penny stock.” *Id.* Mr. Shah acted to induce the purchase of securities by the undercover FBI agent in three separate companies as part of a fraudulent scheme, and the securities at issue in this matter qualified as “penny stocks” because they did not meet any of the exceptions from the definition of a “penny stock,” as defined by Section 3(a)(51) of the Exchange Act, 15 U.S.C. § 78c (a)(51), and Rule 3a51-1 thereunder, 17 C.F.R. 240.3a51-1. Among other things, the securities were equity securities: (1) that were not an “NMS stock,” as defined in Exchange Act Rule 600(b)(47), 17 C.F.R. 242.600(b)(47); (2) that traded below five dollars per share during the relevant period; (3) whose issuer had net tangible assets and average revenue below the thresholds of Exchange Act Rule 3a51-1(g)(1); and (4) did not meet any of the other exceptions from the definition of “penny stock” contained in Rule 3a51-1 of the Exchange Act.

Section 15(b)(6)(A) of the Exchange Act, 15 U.S.C. § 78o(b)(6)(A), authorizes the Commission to impose penny stock bars in administrative proceedings. Like the statutory authority for federal courts, section 15(b)(6)(A) authorizes the Commission to impose the bar on “any person participating, or, at the time of the alleged misconduct, who was participating, in an offering of any penny stock.” In addition, section 15(b)(6)(a)(ii) authorizes the Commission to impose a penny stock bar when an individual has been convicted of certain specified offenses, including any felony or misdemeanor involving the purchase or sale of any security. Section 15(b)(6)(A) of the Exchange Act, 15 U.S.C. § 78o(b)(6)(A); Section 15(b)(4)(B)(ii) of the Exchange Act, 15 U.S.C. § 78o(b)(4)(B)(i). Mr. Shah’s convictions for wire fraud easily fall

within this category of offenses. The Commission may do so if it finds that the bar is in the “public interest” and the person has violated, or has aided and abetted the violation of, the federal securities laws. 15 U.S.C. § 78o(b)(6)(A)(i) (referring to 15 U.S.C. § 78o(b)(4)(A),(D),(E)).

When deciding whether to impose a penny stock bar, federal courts and administrative judges generally consider factors that were first outlined in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979) as:

a) the egregiousness of the defendant’s actions, b) the isolated or recurrent nature of the infraction, c) the degree of scienter involved, d) the sincerity of the defendant’s assurances against future violations, e) the defendant’s recognition of the wrongful nature of his conduct, and f) the likelihood that the defendant’s occupation will present opportunities for future violations.

*Id.* at 1140 (citing *SEC v. Blatt*, 583 F. 2d 1325, 1334 n.29 (5th Cir. 1978); *see also SEC v. Patel*, 61 F.3d 137, 141 (2d Cir.1995) (listing same factors for office and director bar) (citation omitted); *SEC v. First Pacific Bancorp*, 142 F.3d 1186, 1193 (9th Cir. 1998) (same); *see also Clawson v. SEC*, 2005 WL 2174637, at \*2 (9th Cir. Sept. 8, 2005) (applying *Steadman* factors and denying petition seeking review of Commission decision imposing permanent penny stock bar); *SEC v. Indigenous Global Development Corp.*, 2008 WL 8853722, at \*18 (N.D. Cal. June 30, 2008) (applying *Steadman* factors and imposing permanent penny stock bar); *SEC v. Blackout Media Corp.*, 2012 WL 4051951, at \*3 (S.D.N.Y. Sept. 14, 2012) (applying *Patel* factors and imposing permanent penny stock bar); *SEC v. Boock*, 2012 WL 3133638, at \*2-3 (S.D.N.Y. Aug. 2, 2012) (applying *Patel* factors and imposing permanent penny stock bar); *In the Matter of Vladimir Bugarski et al.*, Admin. Proceeding File No. 3-14496 (Initial Decisions Release No. 66842 (April 20, 2012)) (applying *Steadman* factors and affirming initial decision imposing permanent penny stock bar, among other relief); *In the Matter of Peter Siris*, Admin.

Proceeding File No. 3-15057 (Initial Decisions Release No. 477 (Dec. 31, 2012)) (applying *Steadman* factors and imposing permanent penny stock bar); *In the Matter of Stanley Brooks and Brookstreet Securities Corp.*, Admin. Proceeding File No. 3-14983 (Initial Decisions Release No. 475 (Dec. 11, 2012) (same)); *In the Matter of Robert Pribilski*, Admin. Proceeding File 3-14875 (Securities Exchange Act of 1934 Release No. 67915 (Sept. 24, 2012)) (same).

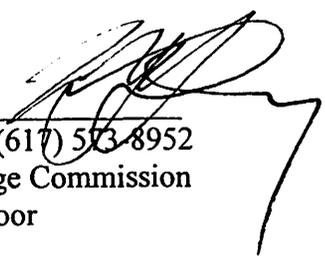
Obviously the *Steadman* factors track closely the factors looked to for determining the appropriateness of issuing a cease-and-desist order, discussed above. As with the above analysis relating to a cease-and-desist order, each of the above factors weighs in favor of issuance of a penny stock bar as to Mr. Shah. The violations of the securities laws were egregious. The violations were not isolated. Mr. Shah's state of mind reflects a high degree of scienter. He acted with full disclosure and understanding of the illegal nature of the conduct, and with the clear intention to illegally enrich himself. As to assurances against future violations, he has offered none, and nothing before, during or since his conviction on the related criminal charges indicates any recognition or acknowledgment by him of the wrongful nature of his conduct. Finally, the violations alleged against Mr. Shah, and for which he already has been convicted in the criminal case, involve companies that trade in the relatively unregulated over-the-counter stock market. Those markets are easily accessible, offering ample opportunity for Mr. Shah to commit future violations of the federal securities laws relating to trading in penny stocks. The cumulative weight of these factors easily meets the standard for imposition of a penny stock bar against Mr. Shah.

## Conclusion

For the reasons discussed above, the Division submits that, as stipulated, Mr. Shah violated Section 10(b) of the Exchange Act and Rule 10b-5(a), thereunder. The Division further submits that based on the evidence and legal standards referenced above, issuance by the Court of a cease-and-desist order and a penny stock bar as to Mr. Shah are well-founded and appropriate.

Dated: June 24, 2016

Respectfully submitted,

  
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COUNSEL FOR  
DIVISION OF ENFORCEMENT

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the Division of Enforcement's Brief in Support of Imposition of Sanctions was served on the following on this 24<sup>th</sup> day of June, 2016, in the manner indicated below:

**By Electronic Mail:**

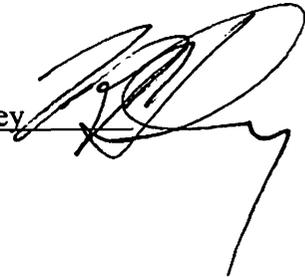
The Honorable Carol Fox Foelak  
Administrative Law Judge  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

**By Overnight Delivery:**

Sandip Shah, [REDACTED]  
[REDACTED]  
[REDACTED]

P.O. Box 8000  
Sheridan OR 97378

//s/ Martin F. Healey  
Martin F. Healey



# EXHIBIT 1

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 76396 / November 9, 2015

ADMINISTRATIVE PROCEEDING  
File No. 3-16949

In the Matter of  
  
SANDIP SHAH,  
  
Respondent.

ORDER INSTITUTING  
ADMINISTRATIVE AND CEASE-AND-  
DESIST PROCEEDINGS PURSUANT  
TO SECTIONS 15(b) AND 21C OF THE  
SECURITIES EXCHANGE ACT OF  
1934 AND NOTICE OF HEARING

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Sandip Shah (“Respondent” or “Shah”).

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Respondent, age 41, is a resident of Chino, California. He was in the business of promoting penny stocks and assisting public companies in finding sources of funding. Respondent participated in offerings of the common stock of SOHM, Inc. (“SOHM”), Costas, Inc. (“Costas”), and a third company (“Company A”), each of which is a penny stock. During the relevant period from at least March 10, 2011 through at least May 12, 2011, Respondent was a consultant to Company A. On May 8, 2014, Respondent was indicted on nine counts of wire fraud in *U.S. v. Shah*, 14-CR-10135-NMG (D. Mass.). On May 15, 2015, a jury found him guilty of nine counts of wire fraud. On August 25, 2015, he was ordered to forfeit \$40,000 and, on September 11, 2015, was sentenced to 27 months' imprisonment to be followed by 2 years' supervised release, and was ordered to pay a \$9,000 fine.

B. OTHER RELEVANT ENTITIES

1. SOHM, Inc. is a Nevada company with its principal place of business currently in Corona, California. SOHM purports to manufacture and distribute generic pharmaceuticals in emerging markets in Asia, Africa, and Latin America. The common stock of SOHM is publicly quoted on OTC Link under the symbol "SHMN."

2. Costas, Inc. is a Nevada company with its principal place of business currently in Tempe, Arizona. Costas purports to provide digital media consulting and other services in India and the United States. Its securities had been registered with the Commission under Exchange Act Section 12(g), but it filed a Form 15-12G on July 17, 2006 terminating its securities registration. The common stock of Costas is publicly quoted on OTC Link under the symbol "CSSI."

3. Shailesh Shah, age 49, a resident of Chino, California, was the President and Chief Executive Officer ("CEO") of SOHM, a publicly traded company that purported to manufacture and distribute generic pharmaceuticals in emerging markets in Asia, Africa, and Latin America. Shailesh Shah was also the President and CEO of Costas, a publicly traded company that purported to provide digital media consulting and other services. Shailesh Shah was charged by criminal information with two counts each of mail fraud and wire fraud on May 8, 2014 and pleaded guilty to all counts on July 18, 2014 in *U.S. v. Shah*, 14-CR-10136-RGS (D. Mass.). On June 23, 2015, Shailesh Shah was sentenced to 18 months' probation and, on June 25, 2015, was ordered to forfeit \$37,500.

C. KICKBACK SCHEMES

1. The "Company A" Scheme

a. These proceedings arise out of a fraudulent scheme in which insiders of publicly-traded penny stock companies paid secret kickbacks to a purported corrupt hedge fund manager, who was in fact an [REDACTED] with the Federal Bureau of Investigation ("Fund Manager"), in exchange for the Fund Manager's purchase of restricted stock of the penny stock companies on behalf of his purported hedge fund ("the Fund"), which did not actually exist.

b. On or about March 10, 2011, an individual who was serving as a [REDACTED] for the Federal Bureau of Investigation and was in the business of promoting penny stocks and assisting public companies in finding sources of funding ("CW") introduced RT, the President and CEO of Company A, a company which purported to design military defense technology, and Sandip Shah ("Shah"), a consultant to Company A, to the Fund Manager ("Company A Meeting").

c. At the Company A Meeting, the Fund Manager informed Shah and RT that he was a manager of an investment fund and was willing to invest money

in companies in return for a fifty percent kickback that would go to the Fund Manager. Shah and RT were told that the Fund was not to be informed of the kickback payments. The Fund Manager also discussed the mechanics of the funding, informing Shah and RT that he was willing to invest up to \$5 million of the Fund's money in Company A, but that, in order to avoid detection, he would invest the money over time, in "tranches" of increasing amounts. The Fund Manager further explained that, after Company A received the Fund's money, fifty percent of the money would be kicked back by Company A to a nominee company controlled by the Fund Manager and about which the Fund had no knowledge. Finally, the Fund Manager explained that, in order to conceal the kickback payments, the nominee company would issue a series of invoices to Company A for services that were never rendered. After the Fund Manager had explained the scheme, RT agreed to enter into the kickback arrangement.

d. After the Company A Meeting, and as Shah was aware, RT prepared the documents related to the scheme, including a consulting agreement with one of the Fund Manager's nominee companies, and sent the documents to the Fund Manager via e-mail. Following the Company A Meeting, as Shah was aware, the Fund Manager invested a total of \$80,000 of the Fund's money in Company A in three wire transfer installments of \$15,000, \$25,000, and \$40,000. As Shah was aware, the Fund Manager received a total of \$40,000 in kickbacks from Company A and RT in three wire transfer kickback payments of \$7,500, \$12,500, and \$20,000.

e. Specifically, on or about March 14, 2011, \$15,000 was sent by wire transfer from a bank account maintained in Boston, Massachusetts purportedly belonging to the Fund to a corporate bank account of Company A. The wire transfer represented the first tranche of funding for Company A.

f. On or about March 15, 2011, RT caused \$7,500 to be sent by wire transfer from a corporate bank account of Company A to a bank account in Boston, Massachusetts, purportedly belonging to one of the Fund Manager's nominee companies. This wire transfer represented the kickback to the Fund Manager from the first tranche of funding for Company A.

g. On or about April 4, 2011, \$25,000 was sent by wire transfer from a bank account maintained in Boston, Massachusetts purportedly belonging to the Fund to a corporate bank account of Company A. The wire transfer represented the second tranche of funding for Company A.

h. On or about April 6, 2011, RT caused \$12,500 to be sent by wire transfer from a corporate bank account of Company A to a bank account in Boston, Massachusetts purportedly belonging to one of the Fund Manager's nominee companies. This wire transfer represented the kickback to the Fund Manager from the second tranche of funding for Company A.

i. On or about April 29, 2011, \$40,000 was sent by wire transfer from a bank account maintained in Boston, Massachusetts purportedly belonging

to the Fund to a corporate bank account of Company A. The wire transfer represented the third tranche of funding for Company A.

j. On or about May 4, 2011, RT caused \$20,000 to be sent by wire transfer from a corporate bank account of Company A to a bank account in Boston, Massachusetts purportedly belonging to one of the Fund Manager's nominee companies. This wire transfer represented the kickback to the Fund Manager from the third tranche of funding for Company A.

k. On various dates between on or about March 17, 2011 and on or about May 3, 2011, RT caused stock certificates representing the purchase by the Fund of three tranches of Company A stock – for 25,000, 38,462, and 50,000 Company A shares, respectively – to be sent to the Fund Manager.

## 2. The SOHM, Inc. Scheme

a. Following the Company A Meeting, Shah found and introduced the Fund Manager to two additional companies in which the Fund Manager could invest the Fund's money in exchange for kickbacks to the Fund Manager. First, on or about April 14, 2011, Shah, along with CW, introduced Shailesh Shah and his company SOHM to the Fund Manager (the "SOHM Meeting"). Although, prior to the meeting, the Fund Manager had not directly offered Shah a percentage of the kickback, Shah knew going into the SOHM Meeting that the Fund Manager planned to meet with him separately, and Shah expected to be compensated for finding and introducing Shailesh Shah and SOHM to the Fund.

b. At the SOHM Meeting, the Fund Manager once again explained the mechanics of the scheme including that he was a manager of an investment fund who was willing to invest money in companies in return for a fifty percent kickback to the Fund Manager and that the Fund's investors had no knowledge about the nature of the proposed deal. The Fund Manager also discussed the mechanics of the funding, informing Shah and Shailesh Shah that he would invest \$5 million of the Fund's money in SOHM but that he would invest the money over time, in "tranches" of increasing amounts. The Fund Manager also explained that, after SOHM received the Fund's money, fifty percent of the money would be kicked back by SOHM to a nominee company that was controlled by the Fund Manager and had no relationship with the Fund. The Fund Manager explained that, in order to conceal the kickback payments, the nominee company would issue a series of invoices to SOHM for services that were never rendered. After the Fund Manager described the scheme, Shailesh Shah agreed to enter into the kickback arrangement.

c. As planned, at the conclusion of the meeting, Shailesh Shah and CW left, and Shah remained to discuss compensation with the Fund Manager. Shah agreed with the Fund Manager that the Fund Manager would pay Shah a portion of the kickbacks paid by Company A, SOHM and any other companies that Shah introduced into the scheme.

d. Following the SOHM Meeting, as Shah was aware, Shailesh Shah prepared the documents related to the scheme, including a consulting agreement with one of the Fund Manager's nominee companies, and sent the documents to the Fund Manager via e-mail. Thereafter, as Shah was aware, the Fund Manager invested a total of approximately \$50,000 of the Fund's money in SOHM in two wire transfer installments of approximately \$20,000 and \$30,000 and received a total of \$25,000 in kickbacks from SOHM and Shailesh Shah in two wire transfer kickback payments of \$10,000, and \$15,000.

e. Specifically, on or about April 20, 2011, \$20,000.04 was sent by wire transfer from a bank account maintained in Boston, Massachusetts purportedly belonging to the Fund to a corporate bank account of SOHM. The wire transfer represented the first tranche of funding for SOHM.

f. On or about April 21, 2011, Shailesh Shah caused \$10,000 to be sent by wire transfer from a corporate bank account of SOHM to a bank account in Boston, Massachusetts purportedly belonging to one of the Fund Manager's nominee companies. This wire transfer represented the kickback to the Fund Manager from the first tranche of funding for SOHM.

g. On or about May 6, 2011, \$30,000 was sent by wire transfer from a bank account maintained in Boston, Massachusetts purportedly belonging to the Fund to a corporate bank account of SOHM. The wire transfer represented the second tranche of funding for SOHM.

h. On or about May 9, 2011, Shailesh Shah caused \$15,000 to be sent by wire transfer from a corporate bank account of SOHM to a bank account in Boston, Massachusetts purportedly belonging to one of the Fund Manager's nominee companies. This wire transfer represented the kickback to the Fund Manager from the second tranche of funding for SOHM.

i. On various dates between on or about April 21, 2011 and on or about May 10, 2011, Shailesh Shah caused stock certificates representing the purchase by the Fund of two tranches of SOHM stock – one for 1666,667 SOHM shares and another for 150,000 SOHM shares – to be sent to the Fund Manager.

### 3. The Costas, Inc. Scheme

a. On or about May 3, 2011, Shah, along with CW, introduced a second company, Costas, to the Fund Manager on a conference call (the "Costas Call"). During the Costas Call, Shah, Shailesh Shah, CW, and the Fund Manager discussed a potential investment of the Fund's money in Costas, which was also run by Shailesh Shah, in exchange for a fifty percent kickback to the Fund Manager. The Fund Manager again explained that, after Costas received the Fund's investment, fifty percent of the money would be secretly kicked back to the Fund Manager. After the participants in the

conference call discussed the scheme, Shailesh Shah agreed to enter into the kickback arrangement involving Costas.

b. Thereafter, as Shah was aware, Shailesh Shah prepared the documents related to the scheme, including a consulting agreement with one of the Fund Manager's nominee companies, and sent the documents to the Fund Manager via e-mail. As Shah was aware, the Fund Manager subsequently invested a total of \$25,000 of the Fund's money in Costas, and received a total of \$12,500 in kickbacks from Costas and Shailesh Shah.

c. Specifically, on or about May 6, 2011, \$25,000 was sent by wire transfer from a bank account maintained in Boston, Massachusetts purportedly belonging to the Fund to a corporate bank account of Costas. The wire transfer represented the first tranche of funding for Costas.

d. On or about May 9, 2011, Shailesh Shah caused \$12,500 to be sent by wire transfer from a corporate bank account of Costas to a bank account in Boston, Massachusetts purportedly belonging to one of the Fund Manager's nominee companies. This wire transfer represented the kickback to the Fund Manager from the first tranche of funding for Costas.

e. On or about May 10, 2011, Shailesh Shah caused stock certificates representing the purchase by the Fund of 35,715 Costas shares to be sent to the Fund Manager.

#### 4. Shah Receives a Portion of the Kickback Monies

a. Pursuant to the April 11, 2014 agreement between Shah and the Fund Manager, the Fund Manager sent Shah a total of \$5,750, which was a portion of the kickbacks paid by the executives of Company A, SOHM, and Costas and represented Shah's compensation for having introduced the company executives to the Fund Manager and for his facilitation of the on-going schemes.

b. Specifically, on or about April 25, 2011, pursuant to wiring instructions provided by Shah, a \$1,000 payment was sent by wire transfer from a bank account in Boston, Massachusetts purportedly belonging to one of the Fund Manager's nominee companies to a personal bank account controlled by Shah. In accordance with the agreement reached between Shah and the Fund Manager during the SOHM Meeting, the \$1,000 represented Shah's share of the kickback received by the Fund Manager in connection with the first tranche of Fund money invested in SOHM.

c. Similarly, on or about May 5, 2011, pursuant to wiring instructions provided by Shah, a \$2,000 payment was sent by wire transfer from a bank account in Boston, Massachusetts purportedly belonging to one of the Fund Manager's nominee companies to a personal bank account controlled by Shah. In accordance with the agreement reached between Shah and the Fund Manager during the SOHM Meeting,

the \$2,000 represented Shah's share of the kickback received by the Fund Manager in connection with the third tranche of Fund money invested in Company A.

d. Finally, on or about May 12, 2011, pursuant to wiring instructions provided by Shah, a \$2,750 payment was sent by wire transfer from a bank account in Boston, Massachusetts purportedly belonging to one of the Fund Manager's nominee companies to a personal bank account controlled by Shah. In accordance with the agreement reached between Shah and the Fund Manager during the SOHM Meeting, the \$2,750 represented Shah's share of the kickbacks received by the Fund Manager in connection with the second tranche of Fund money invested in SOHM and with the Fund's investment in Costas.

#### D. VIOLATIONS

1. As a result of the conduct described above, Shah willfully violated Section 10(b) of the Exchange Act and Rule 10b-5(a) thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

### III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act including, but not limited to, disgorgement, and civil penalties pursuant to Section 21B of the Exchange Act; and

C. Whether, pursuant to Section 21C of the Exchange Act, Respondent should be ordered to cease and desist from committing or causing violations of and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, whether Respondent should be ordered to pay a civil penalty pursuant to Section 21B(a) of the Exchange Act, and whether Respondent should be ordered to pay disgorgement pursuant to Sections 21B(e) and 21C(e) of the Exchange Act.

### IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent as provided for in the Commission's Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields  
Secretary

# EXHIBIT 2

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	
	)	CRIMINAL NO. 14CF10135
v.	)	
	)	VIOLATIONS:
SANDIP SHAH,	)	18 U.S.C. §§ 1343, 1349, 2 (Wire Fraud)
	)	18 U.S.C. § 981 (Forfeiture)
Defendant.	)	28 U.S.C. § 2461 (Forfeiture)

INDICTMENT

THE GRAND JURY CHARGES THAT:

GENERAL ALLEGATIONS

At times relevant to this Indictment:

1. Defendant SANDIP SHAH resided in California. SANDIP SHAH was in the business of promoting penny stocks and assisting public companies in finding sources of funding.
2. Sh.S. was the President and Chief Executive Officer ("CEO") of SOHM, Inc., a company which purported to manufacture and distribute generic pharmaceuticals in emerging markets in Asia, Africa, and Latin America. Sh.S. was also the President and CEO of Costas, Inc., a company which purported to provide digital media consulting and other services. The common stock of SOHM, Inc., and the common stock of Costas, Inc., were both publicly quoted on the Pink OTC Markets, Inc., an inter-dealer electronic quotation and trading system in the over-the-counter securities market commonly known as the "Pink Sheets" (the "Pink Sheets").
3. R.T. was the President and CEO of Company-A, a company which purported to design military defense technology. The common stock of Company-A was publicly quoted on the Pink Sheets.

4. "UA" was an undercover agent of the Federal Bureau of Investigation ("FBI") who purported to be a representative of a major investment fund (the "Fund"). The Fund purportedly had a satellite office in a suburb of Boston, Massachusetts, out of which UA periodically worked (the "Boston Office"). In actuality, and unbeknownst to SANDIP SHAH, Sh.S., and R.T., the Fund never existed, except as part of an ongoing FBI undercover operation.

5. [REDACTED] is a [REDACTED] who was in the business of promoting penny stocks and assisting public companies in finding sources of funding. [REDACTED] is an individual known to the Grand Jury.

#### **THE FRAUD**

6. Beginning in or about March 2011, and continuing through at least January 2012, SANDIP SHAH engaged in, and attempted to engage in, a scheme to defraud and obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, by agreeing to introduce to UA executives of publicly traded companies, who would agree to pay a secret kickback to UA in exchange for receiving funding for their companies from the Fund, and to facilitate such arrangements. SANDIP SHAH and UA agreed that for each kickback made pursuant to such arrangements, SANDIP SHAH would receive a portion of the kickback.

#### **MANNER AND MEANS OF THE FRAUD**

7. On or about March 10, 2011, SANDIP SHAH met with UA, CW-1, and R.T. at the Boston Office (the "Company-A Meeting"). SANDIP SHAH served as a consultant to Company-A. CW-1 introduced R.T. and SANDIP SHAH to UA. The Company-A Meeting was recorded.

8. At the Company-A Meeting, UA informed SANDIP SHAH and R.T. that UA was a manager of an investment fund who was willing to invest money in companies in return for a fifty percent kickback that would go to UA. SANDIP SHAH and R.T. were told that the Fund was not to be informed of the kicked-back payments.

9. UA also discussed the mechanics of the funding, informing SANDIP SHAH and R.T. that he was willing to invest up to \$5 million of the Fund's money in Company-A, but that, in order to avoid detection, he would invest the money over time, in "tranches" of increasing amounts. UA also explained that, after Company-A received the Fund's money, fifty percent of the money would be kicked back by Company-A to a "nominee" company, which UA controlled, and about which the Fund had no knowledge. UA explained that, in order to conceal the kickback payments, the nominee company would issue a series of invoices to Company-A for services that were never rendered.

10. After UA had explained the scheme, R.T. agreed to enter into the kickback arrangement. Thereafter, as SANDIP SHAH was aware, R.T. prepared the documents related to the scheme, including a consulting agreement with one of UA's "nominee" companies, and sent the documents to UA via e-mail. Following the Company-A Meeting, as SANDIP SHAH was aware, UA invested a total of \$80,000 of the Fund's money in Company-A in three wire transfer installments of \$15,000, \$25,000, and \$40,000. As SANDIP SHAH was aware, UA received a total of \$40,000 in kickbacks from Company-A and R.T. in three wire transfer kickback payments of \$7,500, \$12,500, and \$20,000.

11. Specifically, on or about March 14, 2011, \$15,000 was sent by wire transfer from a bank account maintained in Boston, Massachusetts, purportedly belonging to the Fund, to a

corporate bank account of Company-A, held outside of Massachusetts. The wire transfer represented the first tranche of funding for Company-A.

12. On or about March 15, 2011, R.T. caused \$7,500 to be sent by wire transfer from a corporate bank account of Company-A, at JP Morgan Chase Bank, N.A., outside of Massachusetts to Citizens Bank account number [REDACTED] in Boston, Massachusetts, purportedly belonging to one of UA's "nominee" companies. This wire transfer represented the kickback to UA from the first tranche of funding for Company-A.

13. On or about April 4, 2011, \$25,000 was sent by wire transfer from a bank account maintained in Boston, Massachusetts, purportedly belonging to the Fund, to a corporate bank account of Company-A, held outside of Massachusetts. The wire transfer represented the second tranche of funding for Company-A.

14. On or about April 6, 2011, R.T. caused \$12,500 to be sent by wire transfer from a corporate bank account of Company-A, at JP Morgan Chase Bank, N.A., outside of Massachusetts to Citizens Bank account number [REDACTED] in Boston, Massachusetts, purportedly belonging to one of UA's "nominee" companies. This wire transfer represented the kickback to UA from the second tranche of funding for Company-A.

15. On or about April 29, 2011, \$40,000 was sent by wire transfer from a bank account maintained in Boston, Massachusetts, purportedly belonging to the Fund, to a corporate bank account of Company-A, held outside of Massachusetts. The wire transfer represented the third tranche of funding for Company-A.

16. On or about May 4, 2011, R.T. caused \$20,000 to be sent by wire transfer from a corporate bank account of Company-A, at JP Morgan Chase Bank, N.A., outside of

Massachusetts to Citizens Bank account number [REDACTED] in Boston, Massachusetts, purportedly belonging to one of UA's "nominee" companies. This wire transfer represented the kickback to UA from the third tranche of funding for Company-A.

17. Following the Company-A Meeting, SANDIP SHAH found and introduced two additional companies to UA in which UA could invest the Fund's money in exchange for kickbacks to UA. First, on or about April 14, 2011, SANDIP SHAH, along with CW-1, introduced Sh.S. and his company SOHM, Inc., to UA at the Boston Office (the "SOHM Meeting"). The SOHM Meeting was recorded. Although, prior to the meeting, UA had not directly offered SANDIP SHAH a percentage of the kickback, going into the meeting SANDIP SHAH knew that UA planned to meet with him separately, and SANDIP SHAH expected to be compensated for finding and introducing Sh.S. and SOHM, Inc., to UA.

18. At the SOHM Meeting, UA once again explained the mechanics of the scheme. UA informed SANDIP SHAH and Sh.S. that UA was a manager of an investment fund who was willing to invest money in companies in return for a fifty percent kickback to UA. UA explained to SANDIP SHAH and Sh.S. that the Fund's investors had no idea about the nature of their deal.

19. UA also discussed the mechanics of the funding, informing SANDIP SHAH and Sh.S. that he would invest \$5 million of the Fund's money in SOHM, Inc., but that he would invest the money over time, in "tranches" of increasing amounts. UA also explained that, after SOHM, Inc., received the Fund's money, fifty percent of the money would be kicked back by SOHM, Inc., to a "nominee" company, which UA controlled, and which had no relationship with the Fund. UA explained that, in order to conceal the kickback payments, the nominee company would issue a series of invoices to SOHM, Inc., for services that were never rendered.

20. After UA had discussed the scheme, Sh.S. agreed to enter into the kickback arrangement.

21. As planned, at the conclusion of the meeting, Sh.S. and [REDACTED] left, and SANDIP SHAH remained to discuss compensation with UA. SANDIP SHAH agreed with UA that UA would pay SANDIP SHAH a portion of the kickbacks paid by Company-A, SOHM, Inc., and any other companies that SANDIP SHAH introduced into the scheme.

22. Following the SOHM Meeting, as SANDIP SHAH was aware, Sh.S. prepared the documents related to the scheme, including a consulting agreement with one of UA's "nominee" companies, and sent the documents to UA via e-mail. Thereafter, as SANDIP SHAH was aware, UA invested a total of approximately \$50,000 of the Fund's money in SOHM, Inc., in two wire transfer installments of approximately \$20,000 and \$30,000 and received a total of \$25,000 in kickbacks from SOHM, Inc., and Sh.S. in two wire transfer kickback payments of \$10,000, and \$15,000.

23. Specifically, on or about April 20, 2011, \$20,000.04 was sent by wire transfer from a bank account maintained in Boston, Massachusetts, purportedly belonging to the Fund, to a corporate bank account of SOHM, Inc., held outside of Massachusetts. The wire transfer represented the first tranche of funding for SOHM, Inc.

24. On or about April 21, 2011, Sh.S. caused \$10,000 to be sent by wire transfer from a corporate bank account of SOHM, Inc., at Wells Fargo Bank, N.A., outside of Massachusetts to Citizens Bank account number [REDACTED] in Boston, Massachusetts, purportedly belonging to one of UA's "nominee" companies. This wire transfer represented the kickback to UA from the first tranche of funding for SOHM, Inc.

25. On or about May 6, 2011, \$30,000 was sent by wire transfer from a bank account maintained in Boston, Massachusetts, purportedly belonging to the Fund, to a corporate bank account of SOHM, Inc., held outside of Massachusetts. The wire transfer represented the second tranche of funding for SOHM, Inc.

26. On or about May 9, 2011, Sh.S. caused \$15,000 to be sent by wire transfer from a corporate bank account of SOHM, Inc., at Wells Fargo Bank, N.A., outside of Massachusetts to Citizens Bank account number [REDACTED] in Boston, Massachusetts, purportedly belonging to one of UA's "nominee" companies. This wire transfer represented the kickback to UA from the second tranche of funding for SOHM, Inc.

27. On or about May 3, 2011, SANDIP SHAH, along with CW-1, introduced a second company, Costas, Inc., which was also run by Sh.S., to UA on a conference call (the "Costas Call"). The Costas Call was recorded. During the Costas Call, SANDIP SHAH, Sh.S., CW-1, and UA discussed a potential investment of the Fund's money in Costas, Inc., in exchange for a fifty percent kickback to UA. UA again explained that, after Costas, Inc., received the Fund's money, fifty percent of the money would be secretly kicked back to UA.

28. After UA had discussed the scheme, Sh.S. agreed to enter into the kickback arrangement in relation to Costas, Inc. Thereafter, as SANDIP SHAH was aware, Sh.S. prepared the documents related to the scheme, including a consulting agreement with one of UA's "nominee" companies, and sent the documents to UA via e-mail. Thereafter, as SANDIP SHAH was aware, UA invested a total of \$25,000 of the Fund's money in Costas, Inc., and received a total of \$12,500 in kickbacks from Costas, Inc., and Sh.S.

29. Specifically, on or about May 6, 2011, \$25,000 was sent by wire transfer from a bank account maintained in Boston, Massachusetts, purportedly belonging to the Fund, to a corporate bank account of Costas, Inc., held outside of Massachusetts. The wire transfer represented the first tranche of funding for Costas, Inc.

30. On or about May 9, 2011, Sh.S. caused \$12,500 to be sent by wire transfer from a corporate bank account of Costas, Inc., at Union Bank, N.A., outside of Massachusetts to Citizens Bank account number [REDACTED] in Boston, Massachusetts, purportedly belonging to one of UA's "nominee" companies. This wire transfer represented the kickback to UA from the first tranche of funding for Costas, Inc.

31. As a result of these introductions and as compensation for facilitating the scheme as it continued, UA sent SANDIP SHAH a total of \$5,750, representing a portion of the kickbacks paid by the executives of SOHM, Inc., Costas, Inc., and Company-A.

32. On or about April 25, 2011, pursuant to wiring instructions provided by SANDIP SHAH, a \$1,000 payment was sent by wire transfer from Citizens Bank account number [REDACTED] in Boston, Massachusetts, purportedly belonging to one of UA's "nominee" companies, to a personal bank account at U.S. Bank, N.A., outside of Massachusetts controlled by SANDIP SHAH. The \$1,000 represented SANDIP SHAH's share of the kickback received by UA after he had invested the first tranche of the Fund's money in SOHM, Inc., in accordance with the agreement reached during the SOHM Meeting.

33. On or about May 5, 2011, pursuant to wiring instructions provided by SANDIP SHAH, a \$2,000 payment was sent by wire transfer from Citizens Bank account number [REDACTED] in Boston, Massachusetts, purportedly belonging to one of UA's "nominee"

companies, to a personal bank account at U.S. Bank, N.A., outside of Massachusetts controlled by SANDIP SHAH. The \$2,000 represented SANDIP SHAH's share of the kickback received by UA after he had invested the third tranche of the Fund's money in Company-A, in accordance with the agreement reached during the SOHM Meeting.

34. On or about May 12, 2011, pursuant to wiring instructions provided by SANDIP SHAH, a \$2,750 payment was sent by wire transfer from Citizens Bank account number [REDACTED] in Boston, Massachusetts, purportedly belonging to one of UA's "nominee" companies, to a personal bank account at U.S. Bank, N.A., outside of Massachusetts controlled by SANDIP SHAH. The \$2,750 represented SANDIP SHAH's share of the kickbacks received by UA after he had invested the second tranche of the Fund's money in SOHM, Inc., and had invested the Fund's money in Costas, Inc., in accordance with the agreement reached during the SOHM Meeting.

**COUNTS ONE THROUGH NINE**  
**(Wire Fraud – 18 U.S.C. § 1343)**

35. The allegations in Paragraphs 1 through 34 are re-alleged and incorporated herein by reference.

36. On or about the following dates, in the District of Massachusetts and elsewhere, the defendant,

**SANDIP SHAH,**

having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of materially false and fraudulent pretenses, representations, and promises, for the purpose of executing such scheme and artifice, did transmit and cause to be transmitted, by means of wire communication in interstate commerce, writings, signs, signals, pictures, and sounds, and attempted to do so, to wit, wire transfers and associated online notices, instructions and inquiries regarding the transfer of funds into and out of a bank account purportedly belonging to one of UA's nominee companies in Massachusetts, as follows:

COUNT	DATE	WIRE TRANSMISSION
1	03/15/2011	\$7,500 wire transfer from a corporate bank account of Company-A, at JP Morgan Chase Bank, N.A., outside of Massachusetts to Citizens Bank account number [REDACTED] in Boston, Massachusetts.
2	04/06/2011	\$12,500 wire transfer from a corporate bank account of Company-A, at JP Morgan Chase Bank, N.A., outside of Massachusetts to Citizens Bank account number [REDACTED] in Boston, Massachusetts.

COUNT	DATE	WIRE TRANSMISSION
3	05/04/2011	\$20,000 wire transfer from a corporate bank account of Company-A, at JP Morgan Chase Bank, N.A., outside of Massachusetts to Citizens Bank account number [REDACTED] in Boston, Massachusetts.
4	04/21/2011	\$10,000 wire transfer from a corporate bank account of SOHM, Inc., at Wells Fargo Bank, N.A., outside of Massachusetts to Citizens Bank account number [REDACTED] in Boston, Massachusetts.
5	05/09/2011	\$15,000 wire transfer from a corporate bank account of SOHM, Inc., at Wells Fargo Bank, N.A., outside of Massachusetts to Citizens Bank account number [REDACTED] in Boston, Massachusetts.
6	05/09/2011	\$12,500 wire transfer from a corporate bank account of Costas, Inc., at Union Bank, N.A., outside of Massachusetts to Citizens Bank account number [REDACTED] in Boston, Massachusetts.
7	04/25/2011	\$1,000 wire transfer from Citizens Bank account number [REDACTED] in Boston, Massachusetts, to a personal bank account of SANDIP SHAH at U.S. Bank, N.A., outside of Massachusetts.
8	05/05/2011	\$2,000 wire transfer from Citizens Bank account number [REDACTED] in Boston, Massachusetts, to a personal bank account of SANDIP SHAH at U.S. Bank, N.A., outside of Massachusetts.
9	05/12/2011	\$2,750 wire transfer from Citizens Bank account number [REDACTED] in Boston, Massachusetts, to a personal bank account of SANDIP SHAH at U.S. Bank, N.A., outside of Massachusetts.

All in violation of Title 18, United States Code, Sections 1343, 1349, and 2.

**FORFEITURE ALLEGATIONS**  
**(18 U.S.C. § 981(a)(1)(C) & 28 U.S.C. § 2461(c))**

37. Upon conviction of one or more of the offenses alleged in Counts One through Nine of this Indictment, the defendant,

**SANDIP SHAH,**

shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), any property, real or personal, that constitutes, or is derived from, proceeds traceable to the commission of the offenses.

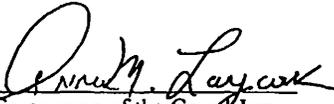
38. If any of the property described in paragraph 37 hereof as being forfeitable pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), as a result of any act or omission of the defendant --

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred to, sold to, or deposited with a third party;
- c. has been placed beyond the jurisdiction of this Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty;

it is the intention of the United States, pursuant to Title 28, United States Code, Section 2461(c), incorporating Title 21, United States Code, Section 853(p), to seek forfeiture of all other property of the defendant up to the value of the property described in subparagraphs a. through e. of this paragraph.

All pursuant to Title 18, United States Code, Section 981 and Title 28, United States Code, Section 2461(c).

A TRUE BILL

  
Foreperson of the Grand Jury

  
ALEXANDER H. BERLIN  
Trial Attorney, Department of Justice

DISTRICT OF MASSACHUSETTS

5/8/2014

Returned into the District Court by the Grand Jurors and filed.

Steve York  
Deputy Clerk

5/8/14 at 3:58 p.m

# EXHIBIT 3

*Uttelinn pm*  
*(cont 5/15/15)*  
*(P)*

United States District Court  
 District of Massachusetts

UNITED STATES OF AMERICA,	)	
	)	
v.	)	
	)	Criminal Action No.
SANDIP SHAH,	)	14-10135-NMG
	)	
Defendant.	)	

Verdict Form

WE, THE JURY, UNANIMOUSLY FIND, THE DEFENDANT, SANDIP SHAH, ON THE CHARGES OF WIRE FRAUD (18 U.S.C. § 1343), ATTEMPT (18 U.S.C. § 1349) AND AIDING AND ABETTING (18 U.S.C. § 2):

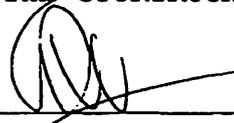
<u>Count</u>	<u>Description</u>	<u>Verdict</u>
1	\$7,500 wire transfer from Advance Defense Technologies, Inc. to Citizens Bank account *****1289 on or about March 15, 2011	<input type="checkbox"/> Not Guilty <input checked="" type="checkbox"/> Guilty
2	\$12,500 wire transfer from Advance Defense Technologies, Inc. to Citizens Bank account *****1289 on or about April 6, 2011	<input type="checkbox"/> Not Guilty <input checked="" type="checkbox"/> Guilty
3	\$20,000 wire transfer from Advance Defense Technologies, Inc. to Citizens Bank account *****0517 on or about May 4, 2011	<input type="checkbox"/> Not Guilty <input checked="" type="checkbox"/> Guilty
4	\$10,000 wire transfer from SOHM, Inc. to Citizens Bank account *****0517 on or about April 21, 2011	<input type="checkbox"/> Not Guilty <input checked="" type="checkbox"/> Guilty
5	\$15,000 wire transfer from SOHM, Inc. to Citizens Bank account *****0517 on or about May 9, 2011	<input type="checkbox"/> Not Guilty <input checked="" type="checkbox"/> Guilty

- |   |  |   |
|---|--|---|
| 6 | \$12,500 wire transfer from Costas, Inc. to Citizens Bank account [REDACTED] on or about May 9, 2011                             | <input type="checkbox"/> Not Guilty<br><input checked="" type="checkbox"/> Guilty |
| 7 | \$1,000 wire transfer from Citizens Bank account [REDACTED] to a personal bank account of Sandip Shah on or about April 25, 2011 | <input type="checkbox"/> Not Guilty<br><input checked="" type="checkbox"/> Guilty |
| 8 | \$2,000 wire transfer from Citizens Bank account [REDACTED] to a personal bank account of Sandip Shah on or about May 5, 2011    | <input type="checkbox"/> Not Guilty<br><input checked="" type="checkbox"/> Guilty |
| 9 | \$2,750 wire transfer from Citizens Bank account [REDACTED] to a personal bank account of Sandip Shah on or about May 12, 2011   | <input type="checkbox"/> Not Guilty<br><input checked="" type="checkbox"/> Guilty |

**YOUR DELIBERATIONS ARE COMPLETE. THE FOREPERSON WILL SIGN THE VERDICT FORM AND NOTIFY THE MARSHAL IN WRITING THAT THE JURY HAS COME TO A DECISION BUT DO NOT REVEAL YOUR VERDICT TO THE MARSHAL. THE JURY WILL THEN BE INVITED TO THE COURTROOM TO RETURN ITS VERDICT.**

Dated: May 15<sup>th</sup> 2015

Jury Foreperson: \_\_\_\_\_



# EXHIBIT 4

UNITED STATES DISTRICT COURT  
District of Massachusetts

UNITED STATES OF AMERICA  
V.

Sandip Shah

JUDGMENT IN A CRIMINAL CASE

Case Number: 1: 14 CR 10135 - 1 - NMG

USM Number: 67512-112

E. Pat Harris, Esq.

Defendant's Attorney

Additional documents attached

THE DEFENDANT:

pleaded guilty to count(s) \_\_\_\_\_

pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.

was found guilty on count(s) 1, 2, 3, 4, 5, 6, 7, 8, 9  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Additional Counts - See continuation page

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 USC § 1343	Wire Fraud	05/12/11	1 - 9

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) \_\_\_\_\_

Count(s) \_\_\_\_\_  is  are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

09/11/15

Date of Imposition of Judgment

*Nathaniel M. Gorton*

Signature of Judge

The Honorable Nathaniel M. Gorton  
U.S. District Judge

Name and Title of Judge

9/23/15

Date

DEFENDANT: **Sandip Shah**  
CASE NUMBER: **1: 14 CR 10135 - 1 - NMG**

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 27 month(s)

This term consists of terms of 27 months on Counts 1 - 9, to be served concurrently.

The court makes the following recommendations to the Bureau of Prisons:

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at \_\_\_\_\_  a.m.  p.m. on \_\_\_\_\_

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on 10/23/15

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

**RETURN**

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

a \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: **Sandip Shah**

CASE NUMBER: **1: 14 CR 10135 - 1 - NMG**

**SUPERVISED RELEASE**

See continuation page

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **2** year(s)

This term consists of terms of 2 years on Counts 1 - 9, such terms to run concurrently.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed 50 tests per year, as directed by the probation officer.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

**STANDARD CONDITIONS OF SUPERVISION**

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: **Sandip Shah**  
CASE NUMBER: **1: 14 CR 10135 - 1 - NMG**

**ADDITIONAL  SUPERVISED RELEASE  PROBATION TERMS**

1. The defendant is to participate in a mental health treatment program as directed by the Probation Office. The defendant shall be required to contribute to the costs of services for such treatment based on the ability to pay or availability of third-party payment.
2. The defendant is to pay the balance of any fine imposed according to a court-ordered repayment schedule.
3. The defendant is prohibited from incurring new credit charges or opening additional lines of credit without the approval of the Probation Office while any financial obligations remain outstanding.
4. The defendant is to provide the Probation Office access to any requested financial information, which may be shared with the Financial Litigation Unit of the U.S. Attorney's Office.

**Continuation of Conditions of  Supervised Release  Probation**

DEFENDANT: **Sandip Shah**  
CASE NUMBER: **1: 14 CR 10135 - 1 - NMG**

**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>		<u>Fine</u>		<u>Restitution</u>
<b>TOTALS</b>	\$ <u>900.00</u>		\$ <u>9,000.00</u>		\$

The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------

See Continuation Page

<b>TOTALS</b>	\$ <u>0.00</u>	\$ <u>0.00</u>
---------------	----------------	----------------

Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the  fine  restitution.

the interest requirement for the  fine  restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: **Sandip Shah**  
CASE NUMBER: **1: 14 CR 10135 - 1 - NMG**

**SCHEDULE OF PAYMENTS**

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A  Lump sum payment of \$ \$900.00 due immediately, balance due
  - not later than \_\_\_\_\_, or
  - in accordance  C,  D,  E, or  F below; or
- B  Payment to begin immediately (may be combined with  C,  D, or  F below); or
- C  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E  Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F  Special instructions regarding the payment of criminal monetary penalties:

Payment of the fine balance is to begin immediately according to the requirements of the Federal Bureau of Prison's Inmate Financial Responsibility Program while the defendant is incarcerated and according to a court-ordered repayment schedule during the term of supervised release.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

See Continuation Page

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

DEFENDANT: Sandip Shah  
CASE NUMBER: 1: 14 CR 10135 - 1 - NMG  
DISTRICT: MASSACHUSETTS

STATEMENT OF REASONS

I COURT FINDINGS ON PRESENTENCE INVESTIGATION REPORT

- A  The court adopts the presentence investigation report without change.
- B  The court adopts the presentence investigation report with the following changes.  
(Check all that apply and specify court determination, findings, or comments, referencing paragraph numbers in the presentence report, if applicable.)  
(Use Section VIII if necessary.)
  - 1  Chapter Two of the U.S.S.G. Manual determinations by court (including changes to base offense level, or specific offense characteristics):
  - 2  Chapter Three of the U.S.S.G. Manual determinations by court (including changes to victim-related adjustments, role in the offense, obstruction of justice, multiple counts, or acceptance of responsibility):  
See section VIII
  - 3  Chapter Four of the U.S.S.G. Manual determinations by court (including changes to criminal history category or scores, career offender, or criminal livelihood determinations):
  - 4  Additional Comments or Findings (including comments or factual findings concerning certain information in the presentence report that the Federal Bureau of Prisons may rely on when it makes inmate classification, designation, or programming decisions):
- C  The record establishes no need for a presentence investigation report pursuant to Fed.R.Crim.P. 32.

II COURT FINDING ON MANDATORY MINIMUM SENTENCE (Check all that apply.)

- A  No count of conviction carries a mandatory minimum sentence.
- B  Mandatory minimum sentence imposed.
- C  One or more counts of conviction alleged in the indictment carry a mandatory minimum term of imprisonment, but the sentence imposed is below a mandatory minimum term because the court has determined that the mandatory minimum does not apply based on
  - findings of fact in this case
  - substantial assistance (18 U.S.C. § 3553(e))
  - the statutory safety valve (18 U.S.C. § 3553(f))

III COURT DETERMINATION OF ADVISORY GUIDELINE RANGE (BEFORE DEPARTURES):

Total Offense Level: 19  
 Criminal History Category: III  
 Imprisonment Range: 37 to 46 months  
 Supervised Release Range: 1 to 3 years  
 Fine Range: \$ 5,000 to \$ 50,000  
 Fine waived or below the guideline range because of inability to pay.

DEFENDANT: **Sandip Shah**  
CASE NUMBER: **1: 14 CR 10135 - 1 - NMG**  
DISTRICT: **MASSACHUSETTS**

**STATEMENT OF REASONS**

**IV ADVISORY GUIDELINE SENTENCING DETERMINATION (Check only one.)**

- A  The sentence is within an advisory guideline range that is not greater than 24 months, and the court finds no reason to depart.
- B  The sentence is within an advisory guideline range that is greater than 24 months, and the specific sentence is imposed for these reasons. (Use Section VIII if necessary.)
- C  The court departs from the advisory guideline range for reasons authorized by the sentencing guidelines manual. (Also complete Section V.)
- D  The court imposed a sentence outside the advisory sentencing guideline system. (Also complete Section VI.)

**V DEPARTURES AUTHORIZED BY THE ADVISORY SENTENCING GUIDELINES (If applicable.)**

**A The sentence imposed departs (Check only one.):**

- below the advisory guideline range
- above the advisory guideline range

**B Departure based on (Check all that apply.):**

- 1 **Plea Agreement (Check all that apply and check reason(s) below.):**
  - 5K1.1 plea agreement based on the defendant's substantial assistance
  - 5K3.1 plea agreement based on Early Disposition or "Fast-track" Program
  - binding plea agreement for departure accepted by the court
  - plea agreement for departure, which the court finds to be reasonable
  - plea agreement that states that the government will not oppose a defense departure motion.
- 2 **Motion Not Addressed in a Plea Agreement (Check all that apply and check reason(s) below.):**
  - 5K1.1 government motion based on the defendant's substantial assistance
  - 5K3.1 government motion based on Early Disposition or "Fast-track" program
  - government motion for departure
  - defense motion for departure to which the government did not object
  - defense motion for departure to which the government objected
- 3 **Other**
  - Other than a plea agreement or motion by the parties for departure (Check reason(s) below.):

**C Reason(s) for Departure (Check all that apply other than 5K1.1 or 5K3.1.)**

- |   |  |   |
|---|--|---|
| <input checked="" type="checkbox"/> 4A1.3 Criminal History Inadequacy           | <input type="checkbox"/> 5K2.1 Death                             | <input type="checkbox"/> 5K2.11 Lesser Harm                             |
| <input type="checkbox"/> 5H1.1 Age  | <input type="checkbox"/> 5K2.2 Physical Injury                   | <input type="checkbox"/> 5K2.12 Coercion and Duress                     |
| <input type="checkbox"/> 5H1.2 Education and Vocational Skills                  | <input type="checkbox"/> 5K2.3 Extreme Psychological Injury      | <input type="checkbox"/> 5K2.13 Diminished Capacity                     |
| <input type="checkbox"/> 5H1.3 Mental and Emotional Condition                   | <input type="checkbox"/> 5K2.4 Abduction or Unlawful Restraint   | <input type="checkbox"/> 5K2.14 Public Welfare                          |
| <input type="checkbox"/> 5H1.4 Physical Condition                               | <input type="checkbox"/> 5K2.5 Property Damage or Loss           | <input type="checkbox"/> 5K2.16 Voluntary Disclosure of Offense         |
| <input type="checkbox"/> 5H1.5 Employment Record                                | <input type="checkbox"/> 5K2.6 Weapon or Dangerous Weapon        | <input type="checkbox"/> 5K2.17 High-Capacity, Semiautomatic Weapon     |
| <input type="checkbox"/> 5H1.6 Family Ties and Responsibilities                 | <input type="checkbox"/> 5K2.7 Disruption of Government Function | <input type="checkbox"/> 5K2.18 Violent Street Gang                     |
| <input type="checkbox"/> 5H1.11 Military Record, Charitable Service, Good Works | <input type="checkbox"/> 5K2.8 Extreme Conduct                   | <input type="checkbox"/> 5K2.20 Aberrant Behavior                       |
| <input type="checkbox"/> 5K2.0 Aggravating or Mitigating Circumstances          | <input type="checkbox"/> 5K2.9 Criminal Purpose                  | <input type="checkbox"/> 5K2.21 Dismissed and Uncharged Conduct         |
|   | <input type="checkbox"/> 5K2.10 Victim's Conduct                 | <input type="checkbox"/> 5K2.22 Age or Health of Sex Offenders          |
|   |  | <input type="checkbox"/> 5K2.23 Discharged Terms of Imprisonment        |
|   |  | <input type="checkbox"/> Other guideline basis (e.g., 2B1.1 commentary) |

**D Explain the facts justifying the departure. (Use Section VIII if necessary.)**

The Court agrees with the government that Criminal History Category III overstates the seriousness of defendant's criminal history and further departs from government's recommendation because of the perceived sincere remorse of the defendant for his conduct.

DEFENDANT: Sandip Shah  
CASE NUMBER: 1: 14 CR 10135 - 1 - NMG  
DISTRICT: MASSACHUSETTS

**STATEMENT OF REASONS**

**VI COURT DETERMINATION FOR SENTENCE OUTSIDE THE ADVISORY GUIDELINE SYSTEM**  
(Check all that apply.)

**A The sentence imposed is (Check only one.):**

- below the advisory guideline range
- above the advisory guideline range

**B Sentence imposed pursuant to (Check all that apply.):**

- 1 Plea Agreement (Check all that apply and check reason(s) below.):**
  - binding plea agreement for a sentence outside the advisory guideline system accepted by the court
  - plea agreement for a sentence outside the advisory guideline system, which the court finds to be reasonable
  - plea agreement that states that the government will not oppose a defense motion to the court to sentence outside the advisory guideline system
- 2 Motion Not Addressed in a Plea Agreement (Check all that apply and check reason(s) below.):**
  - government motion for a sentence outside of the advisory guideline system
  - defense motion for a sentence outside of the advisory guideline system to which the government did not object
  - defense motion for a sentence outside of the advisory guideline system to which the government objected
- 3 Other**
  - Other than a plea agreement or motion by the parties for a sentence outside of the advisory guideline system (Check reason(s) below.):

**C Reason(s) for Sentence Outside the Advisory Guideline System (Check all that apply.)**

- the nature and circumstances of the offense and the history and characteristics of the defendant pursuant to 18 U.S.C. § 3553(a)(1)
- to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense (18 U.S.C. § 3553(a)(2)(A))
- to afford adequate deterrence to criminal conduct (18 U.S.C. § 3553(a)(2)(B))
- to protect the public from further crimes of the defendant (18 U.S.C. § 3553(a)(2)(C))
- to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner (18 U.S.C. § 3553(a)(2)(D))
- to avoid unwarranted sentencing disparities among defendants (18 U.S.C. § 3553(a)(6))
- to provide restitution to any victims of the offense (18 U.S.C. § 3553(a)(7))

**D Explain the facts justifying a sentence outside the advisory guideline system. (Use Section VIII if necessary.)**

DEFENDANT: Sandip Shah  
CASE NUMBER: 1: 14 CR 10135 - 1 - NMG  
DISTRICT: MASSACHUSETTS

Judgment — Page 10 of 10

STATEMENT OF REASONS

VII COURT DETERMINATIONS OF RESTITUTION

A  Restitution Not Applicable.

B Total Amount of Restitution: \_\_\_\_\_

C Restitution not ordered (Check only one.):

- 1  For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because the number of identifiable victims is so large as to make restitution impracticable under 18 U.S.C. § 3663A(c)(3)(A).
- 2  For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because determining complex issues of fact and relating them to the cause or amount of the victims' losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim would be outweighed by the burden on the sentencing process under 18 U.S.C. § 3663A(c)(3)(B).
- 3  For other offenses for which restitution is authorized under 18 U.S.C. § 3663 and/or required by the sentencing guidelines, restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweigh the need to provide restitution to any victims under 18 U.S.C. § 3663(a)(1)(B)(ii).
- 4  Restitution is not ordered for other reasons. (Explain.)

D  Partial restitution is ordered for these reasons (18 U.S.C. § 3553(c)):

VIII ADDITIONAL FACTS JUSTIFYING THE SENTENCE IN THIS CASE (If applicable.)

Section I B: The court finds that, pursuant to U.S.S.G. § 3B1.1(c), defendant was a manager/supervisor of the subject criminal scheme and therefore deserving of a 2-level upward adjustment for his role in the offense.

Sections I, II, III, IV, and VII of the Statement of Reasons form must be completed in all felony cases.

Defendant's Soc. Sec. No.: \_\_\_\_\_

Defendant's Date of Birth: \_\_\_\_\_

Defendant's Residence Address: \_\_\_\_\_  
Chino, California, \_\_\_\_\_

Defendant's Mailing Address: \_\_\_\_\_  
Chino, California, \_\_\_\_\_

Date of Imposition of Judgment  
09/11/15

Nathaniel M. Gorton  
Signature of Judge  
The Honorable Nathaniel M. Gorton U.S. District Judge  
Name and Title of Judge  
Date Signed 9/23/15

# EXHIBIT 5

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA            )  
  )  
  )       Criminal No. 14-10135-NMG  
  )  
  )  
SANDIP SHAH,                                )  
  )  
  )       Defendant.

**AMENDED ORDER OF FORFEITURE**  
**(MONEY JUDGMENT)**

**GORTON, D.J.**

WHEREAS, on May 8, 2014, a federal grand jury sitting in the District of Massachusetts returned a nine-count Indictment charging defendant Sandip Shah (the “Defendant”) with Wire Fraud, in violation of 18 U.S.C. §§ 1343, 1349 and 2 (Counts One through Nine);

WHEREAS, the Indictment also contained a forfeiture allegation, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), which provided notice that the United States sought the forfeiture, upon conviction of the Defendant of any offense alleged in Counts One through Nine of the Indictment, of any property, real or personal, that constitutes, or is derived from, proceeds traceable to the commission of the offenses;

WHEREAS, the Indictment further provided that, if any of the above-described forfeitable property, as a result of any act or omission by the Defendant, (a) cannot be located upon the exercise of due diligence; (b) has been transferred or sold to, or deposited with, a third party; (c) has been placed beyond the jurisdiction of the Court; (d) has been substantially diminished in value; or (e) has been commingled with other property which cannot be divided without difficulty, the United States is entitled to seek forfeiture of any other property of the Defendant, up to the value of such assets, pursuant to 21 U.S.C. § 853(p), as incorporated by 28 U.S.C. § 2461(c);

WHEREAS, on May 15, 2015, after a five-day jury trial, a jury found the Defendant guilty on Counts One through Nine of the Indictment;

WHEREAS, the government proved at trial that, in or about March 2011, an individual, who was an [REDACTED] FBI agent [REDACTED] and who claimed to be a representative of the investment fund "Seafin Capital, LLC," met Sandip Shah and R.T. R.T. was the President and Chief Executive Officer of Advanced Defense Technologies, Inc. ("ADTI"), for which Sandip Shah worked as a consultant;

WHEREAS, at the meeting, which was consensually [REDACTED], the [REDACTED] explained to Sandip Shah and R.T. that he was willing to use his fund's money to buy stocks in publicly traded companies at above-market prices in exchange for a secret 50% kickback to himself;

WHEREAS, the [REDACTED] explained that the kickbacks would be paid to a "nominee" company, which the [REDACTED] controlled, and about which the fund had no knowledge;

WHEREAS, the [REDACTED] explained that, to conceal the kickback payments, the nominee company would issue a series of invoices to ADTI for consulting services that would never be rendered;

WHEREAS, R.T. and the Defendant, in turn, prepared and submitted such fake invoices;

WHEREAS, the United States also proved at trial that approximately one month later, on April 14, 2011, Sandip Shah flew back to Boston to introduce another executive, Shailesh Shah, to the UA, and at the time, Shailesh Shah was the President and Chief Executive Officer of a publicly traded company, SOHM, Inc.;

WHEREAS, less than a month later, on approximately May 3, 2011, Sandip Shah, along with [REDACTED] introduced a second company, Costas, Inc., which was also run by Shailesh Shah, to the [REDACTED] on a conference call for the purpose of engaging in the kickback transaction;

WHEREAS, as a result of these agreements, the FBI sent a total of \$80,000 in three payments to ADTI, approximately \$50,000 in two payments to SOHM, and \$25,000 in one payment to Costas;

WHEREAS, Sandip Shah, R.T., and Shailesh Shah then kicked back 50% of those funds to the UA;

WHEREAS, based on the evidence and testimony presented at trial and the jury's verdict as to Sandip Shah on May 15, 2015, the United States is entitled to an Order of Forfeiture consisting of a personal money judgment against the Defendant, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c);

WHEREAS, on August 25, 2015, this Court entered a Money judgment against the Defendant in the amount of \$40,000;

WHEREAS, on September 11, 2015, a sentencing hearing was held whereby this Court sentenced the Defendant to 27 months incarceration, to be followed by a term of 2 years supervised release, and ordered the Defendant to pay a fine of \$9,000, and a special assessment of \$900;

WHEREAS, the United States respectfully seeks to modify the Money Judgment amount to \$5,750; and

WHEREAS, this modified amount represents the proceeds of the Defendant's crimes.

WHEREAS, Rule 32.2(c)(1) of the Federal Rules of Criminal Procedure provides that "no ancillary proceeding is required to the extent that the forfeiture consists of a money judgment."

ACCORDINGLY, it is hereby ORDERED, ADJUDGED, and DECREED:

1. The Defendant, shall forfeit to the United States the sum of \$5,750 in United States currency, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c).

2. This Court shall retain jurisdiction in the case for the purpose of enforcing this Order.
3. The United States may, at any time, move pursuant to Rule 32.2(e) of the Federal Rules of Criminal Procedure to amend this Order to substitute property having a value not to exceed the amount set forth in Paragraph 1 to satisfy the money judgment in whole or in part.
4. The United States may, at any time, conduct pursuant to Rule 32.2(b)(3) of the Federal Rules of Criminal Procedure and 21 U.S.C. § 853(m), as incorporated by 28 U.S.C. § 2461(c), any discovery to identify, locate or dispose of forfeitable property or substitute assets, including, but not limited to, depositions and requests for documents, electronically stored information, and tangible things.

  
\_\_\_\_\_  
NATHANIEL M. GORTON  
United States District Judge

Dated: Oct 30, 2015